



February 14, 2014

ENGROSSED SENATE BILL No. 394

DIGEST OF SB 394 (Updated February 12, 2014 4:06 pm - DI 84)

Citations Affected: IC 4-6; IC 23-17; IC 24-4.7; IC 24-5.

Synopsis: Consumer protection. Makes various changes to consumer protection provisions enforced by the attorney general, including: (1) enforcement of investigative demands by the attorney general; (2) acceptance of written assurance of voluntary compliance for certain violations concerning nonprofit corporations; and (3) changes to the definition of "consumer transaction" and to acts, omissions, and practices by a supplier that are prohibited in connection with consumer transactions for purposes of the deceptive consumer sales law.

Effective: July 1, 2014.

Bray, Zakas, Kruse, Tallian

(HOUSE SPONSORS — TORR, MCMILLIN)

January 14, 2014, read first time and referred to Committee on Civil Law.

January 28, 2014, amended, reported favorably — Do Pass.

January 30, 2014, read second time, amended, ordered engrossed.

January 31, 2014, engrossed.

February 3, 2014, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Commerce, Small Business and Economic Development.

February 13, 2014, reported — Do Pass.

ES 394—LS 6784/DI 110



February 14, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 394

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-3-6, AS AMENDED BY P.L.136-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 6. **(a)** If a person objects or otherwise fails to obey
4 a written demand issued under section 3 of this chapter, the attorney
5 general may file in the circuit or superior court of the county in which
6 that person resides or maintains a principal place of business within the
7 state an application for an order to enforce the demand. If the person
8 does not reside or maintain a principal place of business in Indiana, the
9 application for the order to enforce the demand may be filed in the
10 Marion County circuit or superior court. Notice of hearing and a copy
11 of the application shall be served upon that person, who may appear in
12 opposition to the application. The attorney general must demonstrate
13 to the court that the demand is proper. If the court finds that the
14 demand is proper, it shall order that person to comply with the demand,
15 subject to such modification as the court may prescribe.
16 **(b) If a person fails or refuses to obey a final order entered**

ES 394—LS 6784/DI 110



1 **under subsection (a) or an order imposing sanctions under section**
 2 **6.5 of this chapter, the court may hold the person in contempt.**

3 (c) Upon motion by that person and for good cause shown, the court
 4 may make any further order in the proceedings which justice requires
 5 to protect the person from unreasonable annoyance, embarrassment,
 6 oppression, burden, expense, or to protect privileged information, trade
 7 secrets or information which is confidential under any other provision
 8 of law. If the court finds that either party has acted in bad faith in
 9 seeking or resisting the demand, it may order that person to pay the
 10 other parties reasonable expenses including ~~attorneys'~~ **attorney's** fees.

11 SECTION 2. IC 4-6-3-6.5 IS ADDED TO THE INDIANA CODE
 12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 2014]: **Sec. 6.5. (a) This section applies only to a:**

- 14 (1) **foreign corporation that does business in Indiana;**
- 15 (2) **foreign limited liability company that does business in**
 16 **Indiana; and**
- 17 (3) **person who does not reside or maintain a principal place**
 18 **of business in Indiana.**

19 (b) **If a person listed in subsection (a) fails or refuses to comply**
 20 **with a written demand issued under section 3 of this chapter, the**
 21 **court may, upon the request of the attorney general or on the**
 22 **court's own initiative, impose one (1) or more of the following**
 23 **sanctions against the person:**

- 24 (1) **Granting injunctive relief to restrain the person from**
 25 **engaging in the:**
 - 26 (A) **advertising or sale of any merchandise; or**
 - 27 (B) **conducting of any trade or commerce;**
 28 **if the alleged or suspected violation involves the merchandise,**
 29 **trade, or commerce.**
- 30 (2) **Revoking or suspending the certificate of authority of the**
 31 **person to do business in Indiana.**
- 32 (3) **Enjoining the person from doing business with or being a**
 33 **contractor for the state of Indiana.**
- 34 (4) **Revoking or suspending any other license, permit, or**
 35 **certificate issued under law to the person which is necessary**
 36 **to perform services or engage in transactions in the industry,**
 37 **field, or trade that the alleged or suspected violation under**
 38 **this chapter occurred.**
- 39 (5) **Granting other relief as may be required, until the person**
 40 **fully complies with the investigative demand.**

41 SECTION 3. IC 4-6-3-9 IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2014]: **Sec. 9. (a) All documentary material,**



1 answers to written interrogatories, and transcripts of oral testimony that
 2 are provided pursuant to an investigative demand shall be kept
 3 confidential by the attorney general until an action is filed against a
 4 person for the violation under investigation, unless:

5 (1) confidentiality is waived by the person being investigated and
 6 the person who has testified, answered interrogatories, or
 7 produced documentary material; or ~~unless~~

8 (2) disclosure is ~~authorized by the court~~ **made by the attorney**
 9 **general to another state or federal attorney general or law**
 10 **enforcement agency** for the purposes of ~~interstate~~ cooperation in
 11 law enforcement of state or federal laws.

12 **(b) All documentary material, answers to written**
 13 **interrogatories, and transcripts of oral testimony that are provided**
 14 **to the attorney general pursuant to an investigative demand issued**
 15 **by another state or federal attorney general or law enforcement**
 16 **agency under similar authority shall be treated as if it was**
 17 **obtained pursuant to an investigative demand issued by the**
 18 **attorney general under section 3 of this chapter.**

19 SECTION 4. IC 23-17-24-1.5, AS ADDED BY P.L.245-2005,
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2014]: Sec. 1.5. (a) This section applies to the following:

22 (1) Notwithstanding IC 23-17-1-1, all corporations organized
 23 under Indiana law for a purpose for which a corporation may be
 24 organized under this article, regardless of the date of
 25 incorporation.

26 (2) A foreign corporation that desires to transact business in
 27 Indiana.

28 (b) In addition to a dissolution under section 1 of this chapter, the
 29 attorney general may petition a court to issue one (1) or more of the
 30 following remedies:

31 (1) Injunctive relief.

32 (2) Appointment of temporary or permanent receivers.

33 (3) Permanent removal of trustees, corporate officers, or directors
 34 who have breached the fiduciary duty.

35 (4) Appointment of permanent court approved replacement
 36 trustees, corporate officers or directors, and members.

37 (c) The attorney general may seek a remedy against any or all of the
 38 following:

39 (1) If the attorney general establishes a condition enumerated in
 40 section 1(a)(1) of this chapter, a corporation.

41 (2) For a violation of the officer's duties under IC 23-17-14-2, a
 42 corporate officer.



(3) For a violation of IC 23-17-13, a corporate director.

(d) In addition to any remedies described in subsection (b), the attorney general may accept a written assurance of voluntary compliance with respect to:

(1) a past, an existing, or an imminent condition enumerated in section 1(a)(1) of this chapter; or

(2) any past, existing, or imminent violation of a duty under this article by a corporation, director, officer, member, trustee, or other corporate principal.

(e) An assurance of voluntary compliance described in subsection (d) may include a stipulation for the voluntary payment by the person of:

(1) the costs of an investigation;

(2) an amount to be held in escrow pending the outcome of an action;

(3) an amount to be held in escrow pending the outcome of an action as restitution to an aggrieved nonprofit corporation or person; or

(4) both amounts described in subdivisions (2) and (3).

(f) An assurance of voluntary compliance described in subsection (d):

(1) must be filed with; and

(2) is subject to the approval of;

the court having jurisdiction.

(g) An assurance of voluntary compliance described in subsection (d) is not considered an admission of a violation of any law.

(h) If the attorney general closes a matter by accepting an assurance of voluntary compliance described in subsection (d), the attorney general may reopen the matter for further proceedings within the period of the applicable statute of limitations.

SECTION 5. IC 24-4.7-3-6, AS AMENDED BY P.L.151-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the purpose of the administration of:

(1) this article;

(2) ~~IC 24-5-0.5-3(a)(19);~~ IC 24-5-0.5-3(b)(19); and

(3) IC 24-5-14.5.

The fund shall be used exclusively for this purpose.

(b) The division shall administer the fund.

(c) The division shall deposit all revenue received:

(1) under this article;



(2) from civil penalties deposited under IC 24-5-0.5-4(h); and
 (3) from civil penalties deposited under IC 24-5-14.5-12;
 in the fund.

(d) Money in the fund is continuously appropriated to the division for the administration of:

- (1) this article;
- (2) ~~IC 24-5-0.5-3(a)(19)~~; **IC 24-5-0.5-3(b)(19)**; and
- (3) IC 24-5-14.5.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds two hundred thousand dollars (\$200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

SECTION 6. IC 24-5-0.5-2, AS AMENDED BY P.L.250-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

~~(C) Collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person.~~

(C) The collection of or attempt to collect a debt by a debt collector.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly



- 1 engages in or solicits consumer transactions, including
 2 soliciting a consumer transaction by using a telephone
 3 facsimile machine to transmit an unsolicited advertisement.
 4 The term includes a manufacturer, wholesaler, or retailer,
 5 whether or not the person deals directly with the consumer.
 6 (B) A person who contrives, prepares, sets up, operates,
 7 publicizes by means of advertisements, or promotes a pyramid
 8 promotional scheme.
 9 (C) A debt collector.
- 10 (4) "Subject of a consumer transaction" means the personal
 11 property, real property, services, or intangibles offered or
 12 furnished in a consumer transaction.
- 13 (5) "Cure" as applied to a deceptive act, means either:
 14 (A) to offer in writing to adjust or modify the consumer
 15 transaction to which the act relates to conform to the
 16 reasonable expectations of the consumer generated by such
 17 deceptive act and to perform such offer if accepted by the
 18 consumer; or
 19 (B) to offer in writing to rescind such consumer transaction
 20 and to perform such offer if accepted by the consumer.
 21 The term includes an offer in writing of one (1) or more items of
 22 value, including monetary compensation, that the supplier
 23 delivers to a consumer or a representative of the consumer if
 24 accepted by the consumer.
- 25 (6) "Offer to cure" as applied to a deceptive act is a cure that:
 26 (A) is reasonably calculated to remedy a loss claimed by the
 27 consumer; and
 28 (B) includes a minimum additional amount that is the greater
 29 of:
 30 (i) ten percent (10%) of the value of the remedy under
 31 clause (A), but not more than four thousand dollars
 32 (\$4,000); or
 33 (ii) five hundred dollars (\$500);
 34 as compensation for attorney's fees, expenses, and other costs
 35 that a consumer may incur in relation to the deceptive act.
- 36 (7) "Uncured deceptive act" means a deceptive act:
 37 (A) with respect to which a consumer who has been damaged
 38 by such act has given notice to the supplier under section 5(a)
 39 of this chapter; and
 40 (B) either:
 41 (i) no offer to cure has been made to such consumer within
 42 thirty (30) days after such notice; or



- 1 (ii) the act has not been cured as to such consumer within a
- 2 reasonable time after the consumer's acceptance of the offer
- 3 to cure.
- 4 (8) "Incurable deceptive act" means a deceptive act done by a
- 5 supplier as part of a scheme, artifice, or device with intent to
- 6 defraud or mislead. The term includes a failure of a transferee of
- 7 structured settlement payment rights to timely provide a true and
- 8 complete disclosure statement to a payee as provided under
- 9 IC 34-50-2 in connection with a direct or indirect transfer of
- 10 structured settlement payment rights.
- 11 (9) "Pyramid promotional scheme" means any program utilizing
- 12 a pyramid or chain process by which a participant in the program
- 13 gives a valuable consideration exceeding one hundred dollars
- 14 (\$100) for the opportunity or right to receive compensation or
- 15 other things of value in return for inducing other persons to
- 16 become participants for the purpose of gaining new participants
- 17 in the program. The term does not include ordinary sales of goods
- 18 or services to persons who are not purchasing in order to
- 19 participate in such a scheme.
- 20 (10) "Promoting a pyramid promotional scheme" means:
- 21 (A) inducing or attempting to induce one (1) or more other
- 22 persons to become participants in a pyramid promotional
- 23 scheme; or
- 24 (B) assisting another in promoting a pyramid promotional
- 25 scheme.
- 26 (11) "Senior consumer" means an individual who is at least sixty
- 27 (60) years of age.
- 28 (12) "Telephone facsimile machine" means equipment that has
- 29 the capacity to transcribe text or images, or both, from:
- 30 (A) paper into an electronic signal and to transmit that signal
- 31 over a regular telephone line; or
- 32 (B) an electronic signal received over a regular telephone line
- 33 onto paper.
- 34 (13) "Unsolicited advertisement" means material advertising the
- 35 commercial availability or quality of:
- 36 (A) property;
- 37 (B) goods; or
- 38 (C) services;
- 39 that is transmitted to a person without the person's prior express
- 40 invitation or permission, in writing or otherwise.
- 41 (14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).
- 42 (15) "Debt collector" has the meaning set forth in 15 U.S.C.



1692a(6). The term does not include a person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(b) As used in section ~~3(a)(15) and 3(a)(16)~~ **3(b)(15) and 3(b)(16)** of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 7. IC 24-5-0.5-3, AS AMENDED BY P.L.273-2013, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. **(a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.**

~~(a)~~ **(b) Without limiting the scope of subsection (a)**, the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused,



1 if it is not and if the supplier knows or should reasonably know
2 that it is not.

3 (4) That such subject of a consumer transaction will be supplied
4 to the public in greater quantity than the supplier intends or
5 reasonably expects.

6 (5) That replacement or repair constituting the subject of a
7 consumer transaction is needed, if it is not and if the supplier
8 knows or should reasonably know that it is not.

9 (6) That a specific price advantage exists as to such subject of a
10 consumer transaction, if it does not and if the supplier knows or
11 should reasonably know that it does not.

12 (7) That the supplier has a sponsorship, approval, or affiliation in
13 such consumer transaction the supplier does not have, and which
14 the supplier knows or should reasonably know that the supplier
15 does not have.

16 (8) That such consumer transaction involves or does not involve
17 a warranty, a disclaimer of warranties, or other rights, remedies,
18 or obligations, if the representation is false and if the supplier
19 knows or should reasonably know that the representation is false.

20 (9) That the consumer will receive a rebate, discount, or other
21 benefit as an inducement for entering into a sale or lease in return
22 for giving the supplier the names of prospective consumers or
23 otherwise helping the supplier to enter into other consumer
24 transactions, if earning the benefit, rebate, or discount is
25 contingent upon the occurrence of an event subsequent to the time
26 the consumer agrees to the purchase or lease.

27 (10) That the supplier is able to deliver or complete the subject of
28 the consumer transaction within a stated period of time, when the
29 supplier knows or should reasonably know the supplier could not.
30 If no time period has been stated by the supplier, there is a
31 presumption that the supplier has represented that the supplier
32 will deliver or complete the subject of the consumer transaction
33 within a reasonable time, according to the course of dealing or the
34 usage of the trade.

35 (11) That the consumer will be able to purchase the subject of the
36 consumer transaction as advertised by the supplier, if the supplier
37 does not intend to sell it.

38 (12) That the replacement or repair constituting the subject of a
39 consumer transaction can be made by the supplier for the estimate
40 the supplier gives a customer for the replacement or repair, if the
41 specified work is completed and:

42 (A) the cost exceeds the estimate by an amount equal to or



- 1 greater than ten percent (10%) of the estimate;
- 2 (B) the supplier did not obtain written permission from the
- 3 customer to authorize the supplier to complete the work even
- 4 if the cost would exceed the amounts specified in clause (A);
- 5 (C) the total cost for services and parts for a single transaction
- 6 is more than seven hundred fifty dollars (\$750); and
- 7 (D) the supplier knew or reasonably should have known that
- 8 the cost would exceed the estimate in the amounts specified in
- 9 clause (A).
- 10 (13) That the replacement or repair constituting the subject of a
- 11 consumer transaction is needed, and that the supplier disposes of
- 12 the part repaired or replaced earlier than seventy-two (72) hours
- 13 after both:
- 14 (A) the customer has been notified that the work has been
- 15 completed; and
- 16 (B) the part repaired or replaced has been made available for
- 17 examination upon the request of the customer.
- 18 (14) Engaging in the replacement or repair of the subject of a
- 19 consumer transaction if the consumer has not authorized the
- 20 replacement or repair, and if the supplier knows or should
- 21 reasonably know that it is not authorized.
- 22 (15) The act of misrepresenting the geographic location of the
- 23 supplier by listing a fictitious business name or an assumed
- 24 business name (as described in IC 23-15-1) in a local telephone
- 25 directory if:
- 26 (A) the name misrepresents the supplier's geographic location;
- 27 (B) the listing fails to identify the locality and state of the
- 28 supplier's business;
- 29 (C) calls to the local telephone number are routinely forwarded
- 30 or otherwise transferred to a supplier's business location that
- 31 is outside the calling area covered by the local telephone
- 32 directory; and
- 33 (D) the supplier's business location is located in a county that
- 34 is not contiguous to a county in the calling area covered by the
- 35 local telephone directory.
- 36 (16) The act of listing a fictitious business name or assumed
- 37 business name (as described in IC 23-15-1) in a directory
- 38 assistance database if:
- 39 (A) the name misrepresents the supplier's geographic location;
- 40 (B) calls to the local telephone number are routinely forwarded
- 41 or otherwise transferred to a supplier's business location that
- 42 is outside the local calling area; and



- 1 (C) the supplier's business location is located in a county that
- 2 is not contiguous to a county in the local calling area.
- 3 (17) The violation by a supplier of IC 24-3-4 concerning
- 4 cigarettes for import or export.
- 5 (18) The act of a supplier in knowingly selling or reselling a
- 6 product to a consumer if the product has been recalled, whether
- 7 by the order of a court or a regulatory body, or voluntarily by the
- 8 manufacturer, distributor, or retailer, unless the product has been
- 9 repaired or modified to correct the defect that was the subject of
- 10 the recall.
- 11 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 12 rules or regulations issued under 47 U.S.C. 227.
- 13 (20) The violation by a supplier of the federal Fair Debt
- 14 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
- 15 rules or regulations issued under the federal Fair Debt Collection
- 16 Practices Act (15 U.S.C. 1692 et seq.).
- 17 (21) A violation of IC 24-5-7 (concerning health spa services), as
- 18 set forth in IC 24-5-7-17.
- 19 (22) A violation of IC 24-5-8 (concerning business opportunity
- 20 transactions), as set forth in IC 24-5-8-20.
- 21 (23) A violation of IC 24-5-10 (concerning home consumer
- 22 transactions), as set forth in IC 24-5-10-18.
- 23 (24) A violation of IC 24-5-11 (concerning home improvement
- 24 contracts), as set forth in IC 24-5-11-14.
- 25 (25) A violation of IC 24-5-12 (concerning telephone
- 26 solicitations), as set forth in IC 24-5-12-23.
- 27 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 28 vehicles), as set forth in IC 24-5-13.5-14.
- 29 (27) A violation of IC 24-5-14 (concerning automatic
- 30 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 31 (28) A violation of IC 24-5-15 (concerning credit services
- 32 organizations), as set forth in IC 24-5-15-11.
- 33 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 34 vehicle subleasing), as set forth in IC 24-5-16-18.
- 35 (30) A violation of IC 24-5-17 (concerning environmental
- 36 marketing claims), as set forth in IC 24-5-17-14.
- 37 (31) A violation of IC 24-5-19 (concerning deceptive commercial
- 38 solicitation), as set forth in IC 24-5-19-11.
- 39 (32) A violation of IC 24-5-21 (concerning prescription drug
- 40 discount cards), as set forth in IC 24-5-21-7.
- 41 (33) A violation of IC 24-5-23.5-7 (concerning real estate
- 42 appraisals), as set forth in IC 24-5-23.5-9.



(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

~~(b)~~ (c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

~~(c)~~ (d) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

~~(d)~~ (e) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

~~(e)~~ (f) For purposes of subsection ~~(a)(12)~~; **(b)(12)**, a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

~~(f)~~ (g) For purposes of subsection ~~(a)(15)~~ **(b)(15)** and ~~(a)(16)~~; **(b)(16)**, a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

~~(g)~~ (h) For purposes of subsection ~~(a)(18)~~; **(b)(18)**, it is an affirmative defense to any action brought under this chapter that the



1 product has been altered by a person other than the defendant to render
2 the product completely incapable of serving its original purpose.

3 SECTION 8. IC 24-5-0.5-4, AS AMENDED BY P.L.250-2013,
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2014]: Sec. 4. (a) A person relying upon an uncured or
6 incurable deceptive act may bring an action for the damages actually
7 suffered as a consumer as a result of the deceptive act or five hundred
8 dollars (\$500), whichever is greater. The court may increase damages
9 for a willful deceptive act in an amount that does not exceed the greater
10 of:

11 (1) three (3) times the actual damages of the consumer suffering
12 the loss; or

13 (2) one thousand dollars (\$1,000).

14 Except as provided in subsection (j), the court may award reasonable
15 attorney fees to the party that prevails in an action under this
16 subsection. This subsection does not apply to a consumer transaction
17 in real property, including a claim or action involving a construction
18 defect (as defined in IC 32-27-3-1(5)) brought against a construction
19 professional (as defined in IC 32-27-3-1(4)), except for purchases of
20 time shares and camping club memberships. This subsection does not
21 apply with respect to a deceptive act described in section ~~3(a)(20)~~
22 **3(b)(20)** of this chapter. This subsection also does not apply to a
23 violation of IC 24-4.7, IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual
24 damages awarded to a person under this section have priority over any
25 civil penalty imposed under this chapter.

26 (b) Any person who is entitled to bring an action under subsection
27 (a) on the person's own behalf against a supplier for damages for a
28 deceptive act may bring a class action against such supplier on behalf
29 of any class of persons of which that person is a member and which has
30 been damaged by such deceptive act, subject to and under the Indiana
31 Rules of Trial Procedure governing class actions, except as herein
32 expressly provided. Except as provided in subsection (j), the court may
33 award reasonable attorney fees to the party that prevails in a class
34 action under this subsection, provided that such fee shall be determined
35 by the amount of time reasonably expended by the attorney and not by
36 the amount of the judgment, although the contingency of the fee may
37 be considered. Except in the case of an extension of time granted by the
38 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,
39 any money or other property recovered in a class action under this
40 subsection which cannot, with due diligence, be restored to consumers
41 within one (1) year after the judgment becomes final shall be returned
42 to the party depositing the same. This subsection does not apply to a



1 consumer transaction in real property, except for purchases of time
 2 shares and camping club memberships. This subsection does not apply
 3 with respect to a deceptive act described in section ~~3(a)(20)~~ **3(b)(20)**
 4 of this chapter. Actual damages awarded to a class have priority over
 5 any civil penalty imposed under this chapter.

6 (c) The attorney general may bring an action to enjoin a deceptive
 7 act, including a deceptive act described in section ~~3(a)(20)~~ **3(b)(20)** of
 8 this chapter, notwithstanding subsections (a) and (b). However, the
 9 attorney general may seek to enjoin patterns of incurable deceptive acts
 10 with respect to consumer transactions in real property. In addition, the
 11 court may:

12 (1) issue an injunction;

13 (2) order the supplier to make payment of the money unlawfully
 14 received from the aggrieved consumers to be held in escrow for
 15 distribution to aggrieved consumers;

16 (3) for a knowing violation against a senior consumer, increase
 17 the amount of restitution ordered under subdivision (2) in any
 18 amount up to three (3) times the amount of damages incurred or
 19 value of property or assets lost;

20 (4) order the supplier to pay to the state the reasonable costs of
 21 the attorney general's investigation and prosecution related to the
 22 action;

23 (5) provide for the appointment of a receiver; and

24 (6) order the department of state revenue to suspend the supplier's
 25 registered retail merchant certificate, subject to the requirements
 26 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds
 27 that a violation of this chapter involved the sale or solicited sale
 28 of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic
 29 drug lookalike substance (as defined in IC 35-31.5-2-321.5).

30 (d) In an action under subsection (a), (b), or (c), the court may void
 31 or limit the application of contracts or clauses resulting from deceptive
 32 acts and order restitution to be paid to aggrieved consumers.

33 (e) In any action under subsection (a) or (b), upon the filing of the
 34 complaint or on the appearance of any defendant, claimant, or any
 35 other party, or at any later time, the trial court, the supreme court, or the
 36 court of appeals may require the plaintiff, defendant, claimant, or any
 37 other party or parties to give security, or additional security, in such
 38 sum as the court shall direct to pay all costs, expenses, and
 39 disbursements that shall be awarded against that party or which that
 40 party may be directed to pay by any interlocutory order by the final
 41 judgment or on appeal.

42 (f) Any person who violates the terms of an injunction issued under



1 subsection (c) shall forfeit and pay to the state a civil penalty of not
 2 more than fifteen thousand dollars (\$15,000) per violation. For the
 3 purposes of this section, the court issuing an injunction shall retain
 4 jurisdiction, the cause shall be continued, and the attorney general
 5 acting in the name of the state may petition for recovery of civil
 6 penalties. Whenever the court determines that an injunction issued
 7 under subsection (c) has been violated, the court shall award
 8 reasonable costs to the state.

9 (g) If a court finds any person has knowingly violated section 3 or
 10 10 of this chapter, other than section ~~3(a)(19)~~ **3(b)(19)** or ~~3(a)(20)~~
 11 **3(b)(20)** of this chapter, the attorney general, in an action pursuant to
 12 subsection (c), may recover from the person on behalf of the state a
 13 civil penalty of a fine not exceeding five thousand dollars (\$5,000) per
 14 violation.

15 (h) If a court finds that a person has violated section ~~3(a)(19)~~
 16 **3(b)(19)** of this chapter, the attorney general, in an action under
 17 subsection (c), may recover from the person on behalf of the state a
 18 civil penalty as follows:

19 (1) For a knowing or intentional violation, one thousand five
 20 hundred dollars (\$1,500).

21 (2) For a violation other than a knowing or intentional violation,
 22 five hundred dollars (\$500).

23 A civil penalty recovered under this subsection shall be deposited in
 24 the consumer protection division telephone solicitation fund
 25 established by IC 24-4.7-3-6 to be used for the administration and
 26 enforcement of section ~~3(a)(19)~~ **3(b)(19)** of this chapter.

27 (i) A senior consumer relying upon an uncured or incurable
 28 deceptive act, including an act related to hypnotism, may bring an
 29 action to recover treble damages, if appropriate.

30 (j) An offer to cure is:

31 (1) not admissible as evidence in a proceeding initiated under this
 32 section unless the offer to cure is delivered by a supplier to the
 33 consumer or a representative of the consumer before the supplier
 34 files the supplier's initial response to a complaint; and

35 (2) only admissible as evidence in a proceeding initiated under
 36 this section to prove that a supplier is not liable for attorney's fees
 37 under subsection (k).

38 If the offer to cure is timely delivered by the supplier, the supplier may
 39 submit the offer to cure as evidence to prove in the proceeding in
 40 accordance with the Indiana Rules of Trial Procedure that the supplier
 41 made an offer to cure.

42 (k) A supplier may not be held liable for the attorney's fees and



1 court costs of the consumer that are incurred following the timely
2 delivery of an offer to cure as described in subsection (j) unless the
3 actual damages awarded, not including attorney's fees and costs, exceed
4 the value of the offer to cure.

5 (l) If a court finds that a person has knowingly violated section
6 ~~3(a)(20)~~ **3(b)(20)** of this chapter, the attorney general, in an action
7 under subsection (c), may recover from the person on behalf of the
8 state a civil penalty not exceeding one thousand dollars (\$1,000) per
9 consumer. In determining the amount of the civil penalty in any action
10 by the attorney general under this subsection, the court shall consider,
11 among other relevant factors, the frequency and persistence of
12 noncompliance by the debt collector, the nature of the noncompliance,
13 and the extent to which the noncompliance was intentional. A person
14 may not be held liable in any action by the attorney general for a
15 violation of section ~~3(a)(20)~~ **3(b)(20)** of this chapter if the person
16 shows by a preponderance of evidence that the violation was not
17 intentional and resulted from a bona fide error, notwithstanding the
18 maintenance of procedures reasonably adapted to avoid the error. A
19 person may not be held liable in any action for a violation of this
20 chapter for contacting a person other than the debtor, if the contact is
21 made in compliance with the Fair Debt Collection Practices Act.



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 394, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 12, delete lines 12 through 13.

and when so amended that said bill do pass.

(Reference is to SB 394 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 394 be amended to read as follows:

Page 4, line 20, after "described" insert "**in**".

Page 4, line 27, delete "However, a violation of the terms of the assurance of".

Page 4, delete lines 28 through 29.

(Reference is to SB 394 as printed January 29, 2014.)

HEAD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred Senate Bill 394, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 394 as printed January 31, 2014.)

Committee Vote: Yeas 11, Nays 0

Representative Messmer

